Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

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Related Bills: See legislative history | Telephone: 845-6978 | Introduced Date: 2/25/99

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Employer Provided Health Care Credit/Farmworkers/California Farmworker Health Care Protection Act Of 1999

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would provide a tax credit equal to 25% of the amount paid or incurred by a taxpayer for preventive health care provided to employees who are qualified farmworkers.

EFFECTIVE DATE

This bill would apply to taxable or income years beginning on or after January 1, 1999, and before January 1, 2002.

LEGISLATIVE HISTORY

AB 2520 (1998); AB 148 (1997) each proposed nearly identical tax credits which died in policy committee

SPECIFIC FINDINGS

Under federal law, to which California conforms, an employer's contribution to an employee accident or health plan is not includable in the employee's gross income. Employers are allowed to deduct premium payments to employee accident or health plans as ordinary business expenses.

Existing state and federal laws provide various tax credits that can reduce a taxpayer's tax liability dollar-for-dollar.

Current state law provides general rules for the division of credits between multiple taxpayers, a husband and wife, or partners. The general rules also provide that unused credit may continue to be carried over as specified even after the credit is repealed. Unless specified in state income tax law, no tax credit shall reduce regular tax below the tentative minimum tax for purposes of calculating alternative minimum tax (AMT).

Current federal and state laws do not currently provide credits for any health care costs. Prior **state law** would have provided a small-employer health coverage tax credit (SB 2260, Ch. 1521, Stats. 1988). However, the credit was repealed before becoming operative.

Board Position:

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_____ N   _____ OUA   __X__ PENDING

Department Director | Date

Gerald Goldberg **4/29/1999**

This bill would allow a tax credit equal to 25% of the amount paid or incurred by a taxpayer for preventive health care provided to the taxpayer's employees who are qualified farmworkers. The credit amount would be limited to $50,000 per taxpayer for each taxable or income year.

This bill would define:

- "preventive health care" as including, but not limited to, an annual physical examination and related services as deemed medically appropriate in an effort to maintain good health, well-being and growth.

- "qualified expenses" as amounts paid for services provided by, or medicines or medical items prescribed or dispensed by either a licensed health care professional or a nonprofit, tax-exempt organization qualifying for an exemption under the federal or state tax code.

- "qualified farmworker" as an individual who is a non-union, agricultural employee; ineligible to receive publicly funded health care services; a California resident; and an employee of the taxpayer, all of whose services for the taxpayer are provided in this state.

Policy Considerations

Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment is already allowed in the form of an expense deduction or depreciation deduction. To the extent that these payments constitute ordinary and necessary business expenses, this new credit would have the effect of providing a double benefit for that expense item. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general conformity policy. In the case of a one-time expense deduction, the reduction of that expense would not create an ongoing difference.

This bill would allow this credit only for taxpayers who employ "agricultural employees," resulting in different tax treatment for similarly situated taxpayers employing workers in different occupations.

Implementation Considerations

The department has identified the following implementation concerns.

- The definition of "preventive health care" is ambiguous and could be interpreted to include items not intended by the author. Further, the phrases "as deemed medically appropriate" and "good health, well-being and growth" are subjective, and interpretations may vary in application from one individual to another. To ensure the author's intentions are achieved and to minimize disputes with taxpayers, a clearer definition of "preventive health care" and its components is needed.

- The definition of "qualified farmworker" specifies that the employee cannot qualify for publicly funded health care services. It is unclear how the employer or the department would make this determination.

- This bill allows a maximum credit not to exceed $50,000 for any one year. Where the credit exceeds the taxpayer's tax liability, the taxpayer would be allowed to carry over the excess to reduce tax liability in subsequent years. It is unclear whether a taxpayer generating more than $200,000 in expenses in any one year could generate a credit greater than $50,000 and carry over the excess to reduce the tax liability in subsequent years.

- Credits are typically used within eight years of being earned. Since this credit does not have a carryover limit, the department would be required to retain the credit carryover on the tax forms indefinitely.

Department staff is available to assist in resolving these and any other issues that may be identified.

Technical Considerations

In the definition of "qualified expenses," the reference to Section 23701 of the Revenue and Taxation Code should be changed to Section 23701d to be consistent with the reference to Internal Revenue Code Section 501(c)(3).

The language allowing carryover of the credit after repeal of the section is unnecessary since general tax law rules contain this provision.

FISCAL IMPACT

Departmental Costs

With the resolution of the implementation considerations, this bill should not significantly impact the department's costs.

Tax Revenue Estimate

The revenue impact of this bill, under the assumptions discussed below, is estimated to be as follows in applied credits:

Revenue Impact of AB 1172 Beginning 1/1/99 Assumed Enactment After 6/30/99 **(In Millions)**			
	1999/2000	2000/2001	2001/2002
Personal Income Tax	-$4	-$5	-$5
Bank and Corporation	-$2	-$4	-$4
Total	-$6	-$9	-$9

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

Tax Revenue Discussion

The revenue impact of this bill would depend upon the number of employers who would incur qualified expenses for preventive health care for employees who are qualified farmworkers, the average costs for qualifying expenses, and available tax liabilities of claimants.

According to a 1998 survey by the U.S. Department of Labor and the University of California, 280,000 full-time equivalent non-unionized farmworkers are employed in California. The same survey shows that 5% of the 280,000 farmworkers are currently receiving health insurance coverage. The primary revenue impact of this proposal would be attributed to employers of the remaining nonunionized farmworkers not currently covered by insurance. In this group, only 80% of the farmworkers do not receive any form of public assistance qualify for this credit, and it is assumed that the employers of two-thirds of the 80% would provide some form of preventive health measures. An average cost of $230 per year per employee was assumed for this group of employers.

In addition, it is assumed that some employers currently offering health care insurance at an average annual cost of $1,070 would switch to paying directly for preventive care measures covered by this bill to obtain the benefit of this credit. It is assumed that no employers would switch in 1999; 5% would switch in 2000; 10% would switch in 2001; and 15% would switch in 2002. (If this bill were amended to allow the credit for health insurance premiums, the revenue loss would increase by approximately $3 million each year.)

Estimates above assume that 70% of the credits generated would be applied in any given year with the balance carried over.

BOARD POSITION

Pending.